

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

Indictment No.: 11 CR 683(S-2)(NG)

v.

EXPERT NOTICE

LEE HYMOWITZ,
MICHAEL FREEMAN, et al.,

Defendants.

-----X

PLEASE TAKE NOTICE that in accordance with Fed.R.Crim.P. Rule 16(b)(1)(C), the defendants, Lee Hymowitz and Michael Freeman, hereby provide notice that in the event that the government offers into evidence on its case-in-chief the retainer agreement dated January 2, 2007 between MCR Restoration Corporation and the Law Offices of Hymowitz & Freeman, the defendants may call as a witness Michael S. Ross, Esq. Mr. Ross is the principal of the Law Offices of Michael S. Ross where he concentrates his practice in attorney ethics and criminal law matters. Annexed hereto as Exhibit A is Mr. Ross' curriculum vitae.

Mr. Ross will testify and provide expert opinions in the following areas:

1. Based upon evidence to be elicited during the defense case, Mr. Ross will testify that a key provision of the retainer agreement referenced above was consistent with "general retainer" agreements which, in contrast to "non-refundable" fee agreements, do not violate the Disciplinary Rules which were included in the New York Lawyer's Code of Professional Responsibility (effective up through April 1, 2009) or the New York Rules of Professional Conduct (effective April 1, 2009), even though there is an element of non-refundability embedded in the provision. Mr. Ross will also testify that there

are, within the New York legal profession, a considerable number of attorneys who, in effect, mistakenly “mix and match” otherwise proper individual and discreet retainer agreement provisions in a single retainer document, with the regrettable result that the final retainer agreement does not comply with New York ethical requirements or is otherwise deficient and unenforceable.

2. In contrast to the government’s claim that the failure of the retainer agreement to comply with the Disciplinary Rules and the failure of the defendants to maintain billing records are clear evidence of the defendants’ “motive” and intent to engage in a fraud, Mr. Ross will testify that there is, within the New York legal profession, a considerable level of non-compliance among practicing lawyers with respect to retainer rules, escrow rules and financial document rules. Mr. Ross will also testify that notwithstanding the fact that lawyers in New York, as part of their bi-annual registration process, are required to affirm that they are in compliance with the provisions of escrow and other financial requirements of former Disciplinary Rule 9-102 and current Rule of Professional Conduct 1.15, there is, within the New York legal profession, a considerable level of non-compliance with those requirements based upon the ignorance of those very same lawyers of the provisions of those Rules and the real life application of those Rules.

Dated: New York, New York
February 10, 2014

Respectfully submitted,

SERCARZ AND RIOPELLE, LLP

By: s/ Maurice H. Sercarz

152 West 57th Street, 24th Fl.
New York, New York 10019
Telephone: (212) 586-4900

Email: msercarz@sercarzandriopelle.com
Attorneys for Lee Hymowitz

LAW OFFICES OF GERALD J. DICHARA

By: s/ Gerald J. DiChiara

3 Park Avenue, 15th Floor
New York, NY 10016
Telephone: (212) 679-1958
Email: jdichiarag@aol.com
Attorneys for Michael Freeman

TO: AUSA ANTHONY M. CAPOZZOLO

AUSA CRISTINA M. POSA